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SPECIAL CIVIL APPLICATION NO 4950/86.

Date of Decision:15.12.1995

FOR APPROVAL AND SIGNATURE

THE HON'BLE MR. JUSTICE N N MATHUR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

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Mr P M Thakkar, Sr.Advocate with Mr Harin Raval, Advocate
for the petitioner

Ms. P S Parmar, AGP for the respondent

CORAM ; N N MATHUR, J.
(December 15, 1995)

ORAL JUDGMENT

By the impugned order dated 16.6.1986, the Collector, Bhavnagar, relying on the decision of this Court rendered in Special Civil Application No.5077/85 dated 27.9.1985, quashed the Resolution of Mahuva Nagarpalika dated 2.4.1985 and directed to sell the land by public auction. Respondent-Nagarpalika, by Resolution dated

2.4.1995, sold the land under reference by private negotiation.

2. Mr P M Raval, Sr.Advocate submits that the Collector has committed manifest error...

ratio of Special Civil Application No.5077/85 without appreciating the facts of the present case. In order to appreciate this contention, it would be appropriate to quote the principles laid down by this Court in Special Civil Application 5077/85 which reads as under:

"It is a settled legal position from the time of the famous case of the International Airport Authority that even in the matter of granting lease, the public authorities like the Municipality which are 'State' for all legal purposes cannot act like private individuals and pick and choose recipients. The respondent-Nagarpalika in this case has unfortunately taken into its

public offers before making allotment of plots. This is likely to give rise to individual discrimination in favour of some persons and this action of the respondent Municipality, therefore, cannot be allowed to stand and is required to be quashed."

4. Ms. Preeti Parmar, learned AGP submits that the Mahuva Nagarpalika being a trustee of the properties vested in it, cannot be permitted to sell the land by private sale. She, in addition to the judgment relied on by the Collector, referred to decision of this Court in the case of BHAGUBHAI H DEVANI v. PORBANDAR MUNICIPALITY & ors., reported in AIR 1984 Guj.134.

5. I have considered the rival contentions of the parties. It is settled legal position of law that in the matter of sale or granting of lease, the public authorities like Municipalities cannot act like a private individual. The local authorities are required to follow a uniform procedure known to all. The recognised method of sale is public auction. However, there is an exception in general rule that if the situation of a piece of land is such that it cannot be used by any other person than the person interested therein. then in such an event, the public auction would be a formality and a sale through private negotiation cannot be described as arbitrary or

discriminatory as no other person would normally be interested, and even if one is interested, it would not be possible for such a person to raise construction in accordance with the building Bye-laws of the local authorities. Such an exception h...

certain statutes. Reference may be given to the Bombay Land Revenue Code, 1879. Rule 43-B of the Code provides that

"when any small strip of land vesting in Government adjacent to an occupied unalienated building site cannot reasonably be disposed of as a separate site, the Collector say, notwithstanding anything to the contrary contained in any of the rules in this Chapter, grant such a strip to the holder of the said site on the same tenure on which he holds the said site if he agrees to pay assessment or rent as the case may be for such a strip of land at the same rate, if any, at which he pays assessment or rent for the said site and suc....

Collector deems adequate having regard to the situation of such strip and any other advantages which are likely to accrue to the holder on account of its disposal to him."

6. In the case in hand, the land under reference is a strip of land said to be in zigzag shape with 8 to 10 feet width. It is also stated that this land cannot be used by any other person except the petitioner as the same is in front of the petitioner's cinema theatre. It is also pointed out that if the land is sold to a third person, no construction can take place in accordance with the Municipal Bye-laws. Thus in my opinion, in such a case, to ask for public auction would be nothing but an empty formality. In this view of the matter, the decision of this Court rendered in Special Civil Application No.5077 of 1985 cannot be attracted and the decision reported in AIR 1984 Guj. 134, relied upon by the learned AGP is also not applicable. In Bhagubhai H Devani's case (supra), 800000 sq.yds. of land was available to be distributed for the purpose of residential accommodation to the people and in the context of the decision of this Court, the Municipality cannot be permitted to sell the land by private sale. But in the present case, it is a question of strip of land adjacent to the petitioner's cinema theatre building. Thus, the Collector, Bhavnagar has committed an error in setting aside the Resolution passed by Mahuva Nagarpalika and in directing to sell the land under reference by public auction.

7. In view of the aforesaid, this Speciala Civil Application is allowed and the order of the Collector, Bhavnagar dated 16.6.1986 is quashed and set aside and the Resolution of the Mahuva Nagarpalika dated 2.4.1985 iis restored.

Rule is made absolute accordingly. There shall be no order as to costs.

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